IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 216 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUBHAI MANJIBHAI DAMOR THRO'COUSIN SHANKARLAL DETAJI

Versus

STATE OF GUJARAT

Appearance:

Ms. Banna Dutt for MR ANIL S DAVE for Petitioner

Mr B Y Mankad, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2000

ORAL JUDGEMENT

The petitioner has filed this petition stating that he was convicted for offence punishable under Section 18 of the Narcotic Drugs Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and was ordered to undergo Rigorous Imprisonment for 10 years and fine of

Rs.1,00,000.00 in default of fine, he was further ordered to undergo Rigorous Imprisonment for one month. That he was also convicted for offence punishable under Section 20(b) of the NDPS Act and he was also ordered to suffer R.I. for six months and fine of Rs.2,000/- in default of fine, he was ordered to undergo R.I. for six months. That he was also convicted for offence punishable under Section 66 (1)(B) and 66(A) of the Bombay Prohibition Act for which no separate sentence has been imposed. That the said order was passed by the learned Addl. Sessions Judge, Ahmedabad on 28.3.1990. The petitioner further states that Criminal Appeal was preferred being Criminal Appeal No.329 of 1990 and the said appeal was dismissed by this Court (Coram: M B Shah (as He then was) & B C Patel, JJ.). The petitioner then submits that considering the aforesaid period of punishment, the said period has expired and, therefore, the petitioner should be forthwith released from jail.

2. Notice was issued to the State. I have heard the learned Advocate for the petitioner and also heard the learned APP for the State. It appears that there is some error in mentioning the punishment imposed on the petitioner. Learned Advocate for the petitioner referred to a certified copy of the order obtained from the Court. But there appears to be some error in mentioning R.I. period awarded to the petitioner in default of payment of fine. In fact, if we read the correct position, it transpires that the petitioner has been sentenced to suffer R.I. for 10 years and in default of fine, he was directed to undergo R.I. for one year. It is for the offence punishable under Section 20(b) of the NDPS Act, he has been ordered to suffer R.I. for one year and fine of Rs.2000/- has been imposed and in default of payment of fine, a direction has been given that he should suffer further R.I. for a period of six months. This shows that the sentence imposed in default of fine is one year and not one month. There appears to be an incorrect narration with respect to the imprisonment to be undergone by the petitioner in default of payment of fine.

3. It is true that the petitioner appears to have been misled on account of the incorrect narration in the copy supplied to the petitioner, but when the true position makes it clear that the imprisonment awarded in default of fine is one year and not one month, then the petitioner has to remain in jail till the period expires.

4. Considering the aforesaid aspects of the case, the period has not yet been expired and, therefore, the

petitioner cannot be released from jail. Consequently, this petition is required to be dismissed in the light of the facts and circumstances narrated above.

5. It is made clear that the substantive sentences are ordered to run concurrently. This can be gathered from the warrant dated 23.8.1990. The jail authorities to verify the position and see that the petitioner is not unnecessarily detained in jail for a period beyond the period mentioned by the Court in the order. Same way, it should also be seen that the petitioner is not released before the due date.

This Special Criminal Application is accordingly dismissed. Rule discharged.

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msp.